

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Village of Vermont, Fulton County, Illinois,
Petitioner

Vs.

The Department of Transportation of the State of Illinois, and the
Burlington Northern and Santa Fe Railway Company,
Respondents

ORIGINAL
RECEIVED
NOV 2 2006

Illinois Commerce Commission
RAIL SAFETY SECTION

T04-0055

Petition for an order authorizing the permanent closure and elimination of the public at grade crossings located at the tracks of The Burlington Northern and Santa Fe Railway Company ("BNSF") and Fourth Street, DOT No. 078471H, Milepost 140.88; Fifth Street, DOT No. 078473W, Milepost 140.82; Seventh Street, DOT No. 078577D, Milepost 140.69; and Eighth Street, DOT No. 078578K, Milepost 140.64; for an order further authorizing the replacement of the existing highway overpass at the intersection of Alley Street and the tracks of BNSF, DOT No. 078457M, Milepost 141.15; an order further authorizing the installation of automatic warning devices consisting of automatic flashing light signals and gates at the grade crossings located at the tracks of BNSF and Sixth Street, DOT No. 078576W, Milepost 140.76 and East Street, DOT No. 063752X, Milepost 94.14; an order authorizing the construction of a connecting road located east of and parallel to BNSF's trackage which would serve to connect Alley Street at the North and East Street at the South; and for an order dividing the costs among the parties as required by law and requiring a substantial portion of the aforementioned project costs to be borne by the Grade Crossing Protection Fund of the Motor Fuel Tax Law.

AMENDMENT TO PETITION

Now comes supplemental petitioner, the Village of Vermont and for its supplemental petition requests that the Illinois Commerce Commission enter a supplemental order granting the Village of Vermont additional time, to and including June 30, 2007, in which to complete all of the work required to be performed by the Village of Vermont pursuant to the order entered by the Illinois Commerce Commission in the above entitled matter. In support whereof, the Village of Vermont states as follows:

DOCKETED

NOV - 2 2006

1. Pursuant to Petition, the Illinois Commerce Commission entered its order in the above captioned cause on December 15, 2004.
2. Pursuant to the aforesaid Order, BNSF and Village of Vermont were authorized and directed to complete the following:
 - Permanent closure and elimination of the Fourth Street (AAR/DOT #078 471H, milepost 140.88), Fifth Street (AAR/DOT #078 473W, milepost 140.82), Seventh Street (AAR/DOT #078 577D, milepost 140.69), and Eighth Street, (AAR/DOT #078 578K, milepost 140.64) public highway-rail grade crossings of the Company's track located in the Village;
 - Replacement of the existing North Alley Street highway overpass (AAR/DOT #078 457M, milepost 141.15) of the Company's track located in the Village; the installation of automatic flashing light signals and gates at the Sixth Street, (AAR/DOT #078 576W, milepost 140.76) and East Street, (AAR/DOT #063 752X, milepost 94.14) public highway-rail grade crossings of the Company's track located in the Village;
 - Construction of a connecting road, located east of and parallel to the Company's track, which will serve to connect North Alley Street and East Street.

All of the work required to be performed by the petitioners was to be completed on or before December 15, 2006.

3. Subsequent to the entry of the Illinois Commerce Commission order of December 15, 2004, the Village of Vermont received bids for their portion of the above described work at a local letting on November 30, 2005. The Village of Vermont approved the low Bid amount of \$1,855,585.56 and awarded the contract to R. A. Cullinan & Son, Inc.
4. Additionally, R. A. Cullinan & Son, Inc. subcontracted the replacement of the existing North Alley Street highway overpass to Otto Baum Company, Inc. On January 12, 2006, Otto Baum Company, Inc., placed a purchase order for the

fabricated steel for the overpass structure with DeLong's Inc. DeLong's in turn ordered the steel to be rolled by Nucor-Yamato Steel Company.

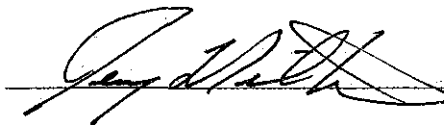
5. Subsequent to the mill rolling, Nucor-Yamato Steel Co. notified DeLong's, Inc. on June 7, 2006, that three of the beams for the bridge deck had been damaged. DeLong's relayed correspondence to Otto Baum Company, Inc. regarding the damaged beams, as well as proposed rolling schedule for the steel. Otto Baum Company, Inc. forwarded this information to R. A. Cullinan & Son, Inc. on July 7, 2006. In a letter dated July 22, 2006, R. A. Cullinan & Son, Inc. informed the Village of Vermont and McClure Engineering Associates, Inc. of these problems, and officially requested an extension of time. A copy of this correspondence is attached hereto, as Exhibit A.
6. At this time, Otto Baum Company, Inc. has completed removal of the existing overpass structure, as well as construction of the piers and abutments. The steel for the beams was rolled in early October, and delivered to DeLong's, Inc. on October 17, 2006. Delivery to the Village of Vermont is anticipated for October 31, 2006. Otto Baum Company, Inc. estimates completion of bridge construction by December 15, 2006, assuming weather is favorable for concrete placement.
7. Subsequent to completion of the bridge, R. A. Cullinan & Son, Inc. still must construct bituminous pavement improvements on North Alley Street. Seeding and fertilizing, cleanup, and other punch list items will also have to be completed.
8. The Village of Vermont and their contractors continue to work on the overall project. Whereas winter months are approaching, and whereas weather in Illinois

cannot be predicted, adequate time must be allowed in the spring for seeding as well as bituminous pavement construction. The Village of Vermont reasonably believes that their contractors can complete all of the work required to be performed by the Village of Vermont under the terms of the Illinois Commerce Commission order by June 30, 2007. Any delay in completion of the overall project has not been caused by inaction of the Village of Vermont or their contractors but rather due to a delay in material delivery caused by unforeseen material damage at the mill.

Wherefore, supplemental petitioner, Village of Vermont prays that the Illinois Commerce Commission grant this supplemental petition and enter a supplemental order granting the Village of Vermont additional time, to and including June 30, 2007, in which to complete all of the work required to be performed by the Village of Vermont pursuant to order of the Illinois Commerce Commission entered in the above captioned cause.

Respectively Submitted

The Village of Vermont

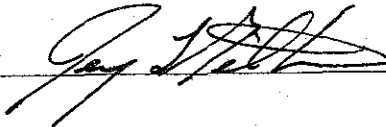
A handwritten signature in dark ink, appearing to read "Jerry Tilton", is written over a horizontal line.

Jerry Tilton, Village President

State of Illinois)
) SS
County of Fulton)

VERIFICATION

Jerry Tilton, being duly sworn on oath, deposes and states that he is Village President for the Village of Vermont, Fulton County, Illinois, petitioner herein; that he is duly authorized by said Village to sign, verify and file the foregoing petition and that the matters set forth in said petition are true and correct to the best of his knowledge, information and belief.



Subscribed and sworn to before me this 31st day of October, 2006.



Notary Public

Seal



PROOF OF SERVICE

Bruce Beal, attorney, being first duly sworn on oath, certified that on October 31st 2006, a copy of the foregoing Supplemental Petition was served upon all parties of record by depositing same in the U.S. mail depository located in Canton, Illinois, in envelope(s) with first class postage, prepaid, addressed to:

Mike Stead
Rail Safety Program Administrator
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Henry Humphries
Railroad Section
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Mr. Jerry Tilton
Village President, Village of Vermont
P. O. Box 200
Vermont, IL 61484

Mr. Jeff Harpring
Rail Safety Engineer
Illinois Department of Transportation
Bureau of Local Roads and Streets
2300 S. Dirksen Parkway
Springfield, IL 62764

Office of Chief Counsel
Illinois Department of Transportation
2300 S. Dirksen Parkway, Suite 300
Springfield, IL 62764

Craig Rasmussen
Manager of Public Projects
BNSF Railway Company
80 - 44th Avenue N.E.
Minneapolis, MN 55421

EXHIBIT A

MICHAEL CULLINAN
President



121 West Park St. • P.O. Box 166
Tremont, Illinois 61568

CONCRETE GRAVEL & BITUMINOUS PAVEMENTS
CONCRETE AND STEEL BRIDGES AND CULVERTS
PILE DRIVING • EXCAVATING • DRAINAGE DITCHES

OFFICE PHONE 925-2711
Area Code 309 PEORIA 676-4343
Area Code 309 PEKIN 346-7262
FAX 309-925-7131

July 22, 2006

Eric Moe, P.E.
McClure Engineering Associates, Inc.
P.O. Box 593
Macomb, IL 61455



JUL 27 2006

Re: Vermont Bridge and Roadway Improvements
Sec. 00-00010-00-BR
Project #03-28-05166

Dear Mr. Moe:

We have been informed by Otto Baum Company, Inc., our bridge subcontractor, that as a result of a problem at the mill there will be a significant delay in the bridge beam delivery. I have enclosed copies of correspondence for your review. I have also included a time line showing key dates that demonstrate timeliness of our responses and actions the most important of which was that the Steel was ordered in January of 2006. In July we were informed that there had been a problem at the mill and they were now anticipating having the beams ready to ship in October.

We must now officially request an extension of time as provided for in the "Standard Specifications" in article 108.08 although it will not be possible to determine how much time will be needed until we receive positive confirmation that the material is ready to ship. Also even assuming the beams would be available some time in October that would then force the decking into winter work.

We would like to suggest that we leave the existing Alley St. structure in place for public safety and convenience until we receive positive confirmation that all materials have been shipped or received. We would complete as much of the other work as possible and then complete the bridge in the spring.

We will await your input on this issue and would like to request that we meet at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads 'Ronald L. Rowell'.
Ronald L. Rowell

Encl.

Cc: Honorable Village President and Board of Trustees
Village of Vermont
P.O. Box 200
Vermont, IL 61484

Mr. Gary Humeston, Project Manager
Otto Baum Company, Inc.
P.O. Box 161
Morton, IL 61550

Vermont Bridge – Time Line

01/12/06 Purchase order to Delong Steel, Inc.

01/20/06 "Signed" subcontract with RA Cullinan & Son, Inc.

01/26/06 Pre-construction meeting; submitted shop drawings for structural steel

03/09/06 Received "approved" shop drawings from McClure Engineering

03/10/06 Forwarded "approved" shop drawings to Delong Steel

05/15/06 Don Spillar called and said Vermont is returning contract to railroad.
Should be ready approximately one month

06/01/06 Called Delong Steel to inquire about beams. They informed us of a
problem with the mill rolling. They did not receive all beams.

06/09/06 Received letter from Delong's documenting the problem with the beams



866 N. MAIN STREET MORTON, IL 61550
Ph. 309/266-7114 FAX 309/263-1050

PURCHASE ORDER

06-103-6

Show this purchase order number on all correspondence, invoices, shipping papers and packages.

To: Delong's Inc.

PO Box 479

Jefferson City, MO 65102

Date of order:

January 12, 2006

Ship to:

Vermont, IL

When ship	ship via	F.O.B. Point	Terms
ASAP 2006 - To be arranged	Truck	Jobsite	
1	Furnish materials in accordance with the plans & specifications for project captioned below		
2	in accordance with State of Illinois specifications. State of Illinois Form LA-15 or certification		
3	of material to accompany material or billing.		
4			
5	North Alley Street		
6	Village of Vermont		
7	Sec 00-00010-00-BR		
8	Fulton County		
9			
10	Furnish:		
11	161,370 LB Fabricated Structural Steel - LUMP SUM \$121,000.00		
12	Prime Paint (M270 GR50W) as required		
13			
14			
15			
16			
17			
18			
19			
20			

1. Please send _____ copies of your invoice.
2. Order is to be entered in accordance with prices, delivery and specifications shown above.
3. Notify us immediately if you are unable to ship as specified.
4. Upon acceptance of this Purchase Order, vendor agrees to meet all requirements of EEOC as related to State and Federal contracts this Purchase Order is to fulfill.

Delong's Inc.

Otto Baum Company, Inc.

accepted by

authorized by

**OTTO BAUM
COMPANY, INC.****C O N T R A C T O R S**www.ottobaum.com309-266-7114 • Fax 309-263-1050
866 N. Main St. • P.O. Box 161 • Morton, IL 61550

MASONRY • CONCRETE • EARTHWORK • SITE/CIVIL • RESTORATION

July 7, 2006

Mr. Ron Rowell
R.A. Cullinan & Son, Inc.
PO Box 166
Tremont, IL 61568RE: Alley St. Bridge
Vermont, IL

Dear Mr. Rowell:

Please find enclosed a letter from DeLong's Inc. and from Nucor-Yamato Steel concerning the structural beams on the above named project. Since they informed us of this problem with the steel, we have investigated other sources for the beams with no success.

Please contact this writer as to how we can approach this problem with your schedule and the Owner to have the least amount of impact on all involved parties if possible.

Sincerely,

Gary Humeston
Project Manager

Enclosure

Received 06/07/2006 09:30PM in 00:44 on-line [0] for ADMIN * Pg 2/2
06/07/2006 17:30 8707620946 WY SINGLETON

PAGE 02/02

NUCOR-YAMATO STEEL CO.

Post Office Box 1228 • Blytheville, Arkansas 72316-1228 • 870-762-5500 • FAX 870-763-9107
www.nucor-yamato.com

June 7, 2006

DeLongs, Inc.
Alice Prow
301 Dixie Road & Industrial Road
P. O. Box 479
Jefferson City, MO 65101

Dear Alice,

Per your request regarding DeLongs purchase order 68862, the Ww18x158x53' 8" beam that was on this purchase order was damaged, cut back and had to be scrapped. A reroll on this section had to be done in order to cover material that was damaged.

We apologize for any inconvenience this may have caused you or your customer and we thank you for your cooperation in this matter.

Sincerely,

Wyvonia Singleton

Wyvonia Singleton
Inside Sales Representative
Southwest Territory

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the period of suspension was unreasonable and that the cost and/or time required for the performance of the contract has increased as a result of such suspension, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. *In no case shall a suspension of less than seven calendar days be considered unreasonable. No adjustment will be made for a suspension of any duration, if the suspension was caused by the acts or omissions of the Contractor, subcontractor, suppliers or the weather.* The Engineer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

108.08 Determination and Extension of Contract Time.

- (a) **Working Days.** When the contract provides a specified number of working days, it is understood that completion of the work within the specified number of working days is an essential part of the contract. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time.

A request for an extension of time may be initiated by either the Engineer or the Contractor. If the Department finds that the quantities of work done, or to be done, are in excess of the estimated quantities by an amount sufficient to warrant additional time, it may grant an extension of time for completion which appears reasonable and proper. The extended number of working days for completion shall then be considered as in effect the same as if it were the original time for completion.

- (b) **Completion Date.** When a completion date is specified, it is understood that time is of the essence and that completion of the work by that date is an essential part of the contract. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time.

In the event of delay in the work beyond the reasonable control of the Contractor resulting from:

1. Conduct or lack of conduct by the Department or its consultants, representatives, officers, agents or employees; or delay by the Department in making the site available, or in furnishing any items required to be furnished to the Contractor by the Department,
2. Extraordinary conditions of weather for the area and time of year with the understanding that the completion time contemplated by this contract anticipates a certain number of lost days due to normal weather conditions, therefore only unusual or extreme weather conditions for the time of year will be considered as justification for a delay in completion of the work,

3. War, national conflicts, terrorist acts or priorities arising therefrom including restrictions of the ability to procure critical materials,
4. Fires,
5. Epidemics,
6. Strikes or other labor disruptions extending in duration more than five calendar days,
7. Utility or railroad adjustments,
8. Material delivery,
9. Subject to compliance with the requirements of Article 105.08, the operations of other contractors working within the limits of the contract or coordinated contracts,
10. Cataclysmic events,

And for no other cause or causes, the Contractor shall be entitled to a reasonable extension of time only by the amount of time the Contractor is actually delayed thereby in the performance of the work, provided notice requesting an adjustment to the completion date is given as herein provided. Contractor shall not be entitled to any extension of time unless the Contractor notifies the Department in writing within seven calendar days of the commencement of each such delay requesting an adjustment, and failure of the Contractor to request an adjustment in conformity with this article shall be deemed a waiver of the same. Interim completion dates incorporated into a contract subject to a final completion date, and completion date plus working days contracts shall be governed by these provisions.

The Contractor recognizes it is imperative that the work proceed uninterrupted and shall endeavor to prevent and shall promptly cure any work stoppage caused by any labor or jurisdictional disputes arising out of the assignment of work to be performed by the Contractor or its Subcontractors or Subcontractors of any tier.

After the Contractor has filed a request for an extension of time, the Department will notify the Contractor, in writing, whether or not such extension will be approved. The Engineer will consider how timely the Contractor prosecuted the work up to the point of the delay according to the progress schedule approved according to Article 108.02 when considering the request. No extension of time shall be granted unless the delay in completion of the work was caused specifically by a delay in a portion of the work that was on the critical path of the progress schedule, and that was otherwise on schedule. If approved, the extended date for completion shall then be considered as in effect the same as if it were the original date for completion.